

HOUSE BILL NO. 163

INTRODUCED BY G. CUSTER, F. ANDERSON, R. COOK, K. DUDIK, M. FUNK, W. MCKAMEY,  
G. PIERSON

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FOR DESIGNATION OF LAY CAREGIVERS FOR HOSPITAL PATIENTS; REQUIRING HOSPITALS TO PROVIDE AN OPPORTUNITY FOR DESIGNATION OF CAREGIVERS; ~~AND~~ REQUIRING HOSPITALS TO PROVIDE A DISCHARGE PLAN AND INSTRUCTIONS TO CAREGIVERS; AND LIMITING GOVERNMENTAL LIABILITY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Aftercare" means assistance provided by a lay caregiver to a patient after the patient's discharge from a hospital and limited to the patient's condition at the time of discharge, including but not limited to assistance with:

- (a) basic activities of daily living;
- (b) instrumental activities of daily living; and
- (c) medical or nursing tasks that do not require a licensed professional.

(2) "Discharge" means a patient's exit or release from a hospital to the patient's residence after an inpatient hospital admission.

(3) "Entry" means an individual's admission into a hospital for the purposes of inpatient care.

(4) "Hospital" means a hospital or critical access hospital as those terms are defined in 50-5-101.

(5) (a) "Lay caregiver" means an individual designated as a lay caregiver by a patient or the patient's legal representative to provide aftercare to a patient in the patient's residence. The term includes but is not limited to a spouse, relative, partner, friend, or neighbor.

(b) The term does not include an individual who receives a third-party payment for providing post-discharge assistance to a patient unless the individual is providing assistance under a Medicaid self-directed service delivery model authorized by the state.

(6) "Legal representative" means:



- 1 (a) a legal guardian;  
 2 (b) a person who holds a medical power of attorney; or  
 3 (c) a representative named in an advance health care directive recognized under Montana law or the  
 4 law of another state.

5 (7) (a) "Residence" means a dwelling that the patient considers to be the patient's home, including the  
 6 home of a lay caregiver, relative, or friend.

7 (b) The term does not include an assisted living facility, state-licensed group home, hospital,  
 8 rehabilitation facility, or skilled nursing facility.

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10 **NEW SECTION. Section 2. Lay caregiver -- designation.** (1) (a) As soon as practicable after a  
 11 patient's entry and before the patient's discharge or transfer, a hospital shall provide the patient or, if applicable,  
 12 the patient's legal representative with at least one opportunity to designate at least one lay caregiver.

13 (b) If the patient is unconscious or otherwise incapacitated upon entry, the hospital shall provide the  
 14 patient or the patient's legal representative with an opportunity to designate a lay caregiver as soon as practicable  
 15 after the patient regains consciousness or capacity.

16 (2) If the patient or the patient's legal representative declines to designate a lay caregiver, the hospital  
 17 shall promptly APPROPRIATELY document the decision ~~in the patient's medical record~~.

18 (3) If a lay caregiver is designated pursuant to this section, the hospital shall:

19 (a) promptly request the written consent of the patient or legal representative to release medical  
 20 information to the lay caregiver, using the hospital's established procedures for releasing personal health  
 21 information and in compliance with all state and federal laws governing release of the information; and

22 (b) ~~record in the patient's medical record~~ APPROPRIATELY DOCUMENT the designation of the lay caregiver,  
 23 the relationship of the lay caregiver to the patient, and the name, telephone number, and address of the lay  
 24 caregiver.

25 (4) If the patient or the patient's legal representative declines to consent to the release of medical  
 26 information to the lay caregiver, the hospital is not required to provide notice to the lay caregiver as provided in  
 27 [section 3] or to provide information contained in the discharge plan developed pursuant to [section 4].

28 (5) A patient or the patient's legal representative may change the designated lay caregiver at any time.  
 29 The hospital shall ~~record~~ APPROPRIATELY DOCUMENT the change ~~in the patient's medical record~~ as soon as  
 30 practicable.

1 (6) A person designated as a lay caregiver pursuant to this section is not obligated to perform any  
2 aftercare tasks for a patient.

3 (7) This section may not be construed to require a patient or a patient's legal representative to designate  
4 a lay caregiver.

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6 **NEW SECTION. Section 3. Notice to designated lay caregiver.** (1) A hospital shall notify a patient's  
7 designated lay caregiver of the patient's impending discharge or transfer to another hospital or facility licensed  
8 by the state as soon as practicable. Notice may be provided after the patient's physician issues a discharge order  
9 and prior to the patient's discharge or transfer.

10 (2) If the hospital is unable to contact the lay caregiver, the lack of contact may not interfere with, delay,  
11 or otherwise affect the medical care provided to the patient or an appropriate discharge or transfer of the patient.  
12 The hospital shall promptly APPROPRIATELY document in the patient's medical record the inability to contact the  
13 lay caregiver.

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15 **NEW SECTION. Section 4. Instruction to designated lay caregiver.** (1) As soon as practicable and  
16 before a patient's discharge, the hospital shall:

17 (a) consult with the lay caregiver and the patient ~~about the lay caregiver's capabilities and limitations;~~  
18 (b) issue a discharge plan that describes a patient's aftercare needs at the patient's residence; and  
19 (c) provide the lay caregiver with an opportunity for instruction in the aftercare tasks described in the  
20 discharge plan.

21 (2) At a minimum, a discharge plan prepared pursuant to this section must:

22 (a) note the name and contact information of the lay caregiver;  
23 (b) describe all aftercare tasks necessary to maintain the patient's ability to remain in the patient's  
24 residence, taking into account the capabilities and limitations of the lay caregiver; and  
25 (c) provide contact information for relevant followup care and for resources needed to successfully carry  
26 out the discharge plan.

27 (3) Instruction for the lay caregiver may be conducted in person, by telephone, or by video technology  
28 at the discretion of the lay caregiver. At a minimum, the instruction shall:

29 (a) be provided, to the extent possible, in nontechnical language;  
30 (b) give the lay caregiver and patient an opportunity to ask questions about the aftercare tasks; and

1 (c) in a culturally competent manner, provide answers to the lay caregiver's and patient's questions.

2 (4) Instruction required pursuant to this section must be APPROPRIATELY documented ~~in the patient's~~  
3 ~~medical record~~. At a minimum, the documentation must include the date, time, and contents of the instruction.

4 (5) Nothing in this section may delay the patient's discharge or transfer to another facility.

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6 **NEW SECTION. Section 5. Noninterference with powers of existing health care directives.** (1)

7 Nothing in this act may be construed to interfere with the rights of an agent operating under a valid health care  
8 directive.

9 (2) Designation as a lay caregiver by itself does not:

10 (a) constitute designation as a legal representative; or

11 (b) authorize the lay caregiver to make health care decisions on behalf of the patient.

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13 **NEW SECTION. Section 6. Noninterference with care or discharge.** Nothing in [sections 1 through

14 7] shall delay or otherwise affect:

15 (1) the medical care provided to the patient; or

16 (2) an appropriate discharge or transfer of the patient.

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18 **NEW SECTION. Section 7. Immunity.** (1) Nothing in [sections 1 through 7] may be construed to create

19 a new private right of action not otherwise existing in law against a hospital or any of its directors, trustees,  
20 officers, employees, or agents or any contractors with whom the hospital has a contractual relationship.

21 (2) A hospital, its directors, trustees, officers, employees, and agents and any contractors with whom  
22 the hospital has a contractual relationship may not be held liable for the services rendered or not rendered by the  
23 lay caregiver to the patient at the patient's residence if the hospital has complied with [sections 1 through 7] and  
24 acted reasonably and in good faith.

25 ~~(3) The immunity provided in this section does not apply to a hospital or its trustees, officers, employees,~~  
26 ~~agents, or contractors if the hospital is owned or operated by the state or a political subdivision of the state.~~

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28 **NEW SECTION. SECTION 8. TWO-THIRDS VOTE REQUIRED. BECAUSE [SECTION 7] LIMITS GOVERNMENTAL**  
29 **LIABILITY, ARTICLE II, SECTION 18, OF THE MONTANA CONSTITUTION REQUIRES A VOTE OF TWO-THIRDS OF THE MEMBERS**  
30 **OF EACH HOUSE OF THE LEGISLATURE FOR PASSAGE.**

